

## **RAJASTHAN HIGH COURT**

Brothers Pharma (Pvt.) Ltd.

Vs.

Rajasthan Financial Corpn.

C.W.P. No. 850 of 2000

(R.R. Yadav, J.)

21.11.2000

### **ORDER**

**R.R. Yadav, J.**

1. The instant writ petition has been filed by petitioner Nos. 1 and 2 questioning the legality and validity of the impugned notice dated 19-2-2000 (Annexure-19 and Annexure-20) issued under Section 30 of the State Financial Corporations Act, 1951 (hereinafter referred to as "the Act of 1951"). Annexure-19 relates to petitioner No. 1 whereas Annexure-20 relates to petitioner No. 2. In order to avoid multifariousness, learned counsel for the petitioners presses the writ petition only for petitioner No. 1 and withdraw the petition of petitioner No. 2 with liberty to file a fresh one.

2. Therefore, now by way of filing the present writ petition the petitioner No. 1 alone is questioning the legality and validity of notice Annexure-19 issued under Section 30 of the Act of 1951 with a prayer for a direction to the Corporation to provide statement of accounts to the petitioner No. 1 and also prayed for to reconcile the accounts in accordance with the guidelines of the Reserve Bank of India and finalize the rehabilitation /reschedulement of the petitioners pending since 1991. It is also prayed by the petitioner to issue a direction to the Corporation restraining it from taking any coercive action against the petitioner by way of taking possession of the Industrial Units and Managements of the petitioner's Unit.

3. Although, the present writ petition is posted today for admission but with the consent of the learned counsel for the parties, the instant writ petition is finally disposed of at the admission stage.

4. The brief facts necessary for disposal of the present writ petition are that the petitioner No. 1 has taken term loan from respondent. He has committed default in payment of installments hence, respondent was compelled to give impugned notice Annexure-19 under Section 30 of the Act of 1951. It is incorrectly stated in the writ petition that petitioner No. 1 has taken term loan of Rs. 31,10,000/- as by oral statement of the learned counsel for the petitioner it ought to be Rs. 30,10,000/-. It is revealed from perusal of Annexure-19 that since the petitioner has committed default in payment of installments, therefore, respondent-Corporation has left with no other alternative but to call upon him to pay the entire loan amount.

5. It is submitted by the learned counsel for the petitioner that before issuing notice under Section 30 of the Act of 1951, the proceedings were pending under Section 31 of the said Act but those proceedings were withdrawn by the respondent. It is urged by the learned counsel for the petitioner that it is true that Rajasthan Financial Corporation has two options to initiate the proceedings for recovering the balance term loan from the petitioner either invoking the procedure prescribed under Section 31 of the Act of 1951 or as envisaged under Section 29 of the said Act. It is submitted by Mr. N.K. Maloo, learned counsel for the petitioner that once the Corporation initiated the proceedings under Section 31 of the Act of 1951 it has no authority to issue notice under Section 30 of the said Act to recover the entire amount unless the proceeding initiated before the District Judge determining the entire amount is decided in accordance with the procedure prescribed under Section 32 of the Act of 1951. In support of his aforesaid argument, the learned counsel for the petitioner placed reliance on decision rendered by the Apex Court, reported in (*Delhi Financial Corporation v. B.B. Behel*),<sup>1</sup> (*Aravali Pipes Ltd. v. Haryana Financial Corporation, Chandigarh*),<sup>2</sup> (*Banking*) (*Shilpa Products v. Karnataka State Financial Corporation*)<sup>3</sup> and *Umaid Textile Mills v. Rajasthan Financial Corporation, Jaipur*).<sup>4</sup>

6. The aforesaid argument advanced by the learned counsel for the petitioner is refuted by Mr. R.D. Rastogi, learned counsel for the respondent-RFC with equal vehemence. It is submitted by the learned counsel for the respondent that if the respondent has choice to invoke the provision envisaged under Section 31 and Section 29 then, it is their discretion to initiate proceeding under either of the sections. It is submitted by Mr. Rastogi that since the proceedings initiated under Section 31 of the Act of 1951 have been withdrawn, therefore, the respondent is not prohibited to give notice under

Section 30 and cannot be prohibited to recover the balance term loan from petitioner No. 1 under Section 29 of the said Act. In support of his aforesaid contention, he placed reliance on a decision rendered by the Supreme Court in the case of *Andhra Pradesh State Financial Corporation v. M/s. GAR Re-rolling Mills*,<sup>5</sup>

7. In his rejoinder argument, Mr. Maloo, learned counsel for the petitioner invited the attention of the Court to the case of GAR Re-Rolling Mills (supra). According to Sri Maloo, it is clear that in the aforesaid case, the State Financial Corporation has obtained an order under Section 31 of the State Financial Corporations Act, 1951 therefore, in that case it was held that recovery is to be made ordinarily according to the provisions envisaged under Section 32 of the said Act. According to Sri Maloo, since in the present case, the proceeding initiated by the Corporation was withdrawn, therefore, the facts of the aforesaid case is not applicable to the instant case.

8. I have given my thoughtful consideration to the rival contention raised at the bar. I am of the view that the controversy involved in the present writ petition is squarely covered by the decision rendered by Apex Court in case of M/s. GAR Re-Rolling Mills (supra) relied upon by the learned counsel for the respondent and decisions cited by the learned counsel for the petitioner are not analogous to the facts and circumstances of the present case.

9. I am of the view that the Apex Court had explained the doctrine of election in case of GAR Re-Rolling Mills (supra) holding that on a conjoint reading to Sections 29 and 31 of the Act, it appears that in case of default in repayment of loan or any installment or any advance or in breach of any agreement, the Corporation has two remedies available to it against the defaulting industrial concern; one under Section 29 and the other under Section 31 of the Act. The remedy under Section 29 or Section 31 of the Act is that of the Financial Corporation alone and the defaulting concern has no say whatsoever in the matter, as to which remedy should be taken recourse to by the Corporation against it for effecting the recovery. the expression "without prejudice to the provision of Section 29 of this Act" as appearing in Section 31 of the Act clearly demonstrates that the Legislature did not intend to confine the Corporation to take recourse to only a particular remedy against the defaulting industrial concern for recovery of the amount due to it. It left the choice to the Corporation to act in the first instance under Section 31 of the Act and save its rights and remedies under Section 29 of the Act to be availed at later stage, with the sole object of enabling the Corporation

to recover its dues. It is not, however, obligatory on the part of the Financial Corporation to invoke the special provisions of Section 31 of the Act. It can even without taking recourse to the provisions of Section 31 of the Act of 1951 invoke the procedure prescribed under Section 29 of the said Act for realisation of its dues. Where the Corporation takes recourse to the provisions of Section 31 of the Act and obtains an order from the Court, it shall ordinarily seek its enforcement in the manner provided by Section 32 of the Act, which provisions are aimed to act in aid of the orders obtained under Section 31 of the Act and it cannot simultaneously initiate and take recourse to the remedy available to it under Section 29 of the Act unless it gives up, abandons or withdraws the proceedings under Section 31 of the Act, at whatever stage those proceedings may be. The Corporation cannot simultaneously pursue two remedies at the same time. The scope of the two remedies is essentially different even if somewhat similar result flows by taking recourse to either of the two provisions in certain respects. From the aforesaid discussion, I have no hesitation to hold that controversy involved in the present case is squarely covered by the decision rendered by the Supreme Court in case of GAR Re- Rolling Mills Ltd. (supra).

10. The second limb of the argument of the Mr. N.K. Maloo, learned counsel for the petitioner is that Section 29 is to be interpreted in the light of Section 24 of the Act of 1951. In support of his aforesaid contention, he placed reliance on a decision rendered by this Court in case of *Umaid Textiles Mills v. Rajasthan Financial Corporation, Jaipur*. It is urged by Shri Maloo that power of Corporation under Section 29 is to be exercised taking into account the imperative impact of Section 24 of the Act of 1951 which provides that the Board for discharging its functions under this Act shall act on business principles, <sup>6</sup> due regard being had by it to the interests of industry, commerce and the general public.

There is no quarrel with the aforesaid submission made by the learned counsel for the petitioner. In the present case, the respondent has taken into account the business principles and after giving due regard to the interest of industry repeatedly made demands to pay the term loan which was not paid by the petitioner on some pretext or the other. It is evident on the face of record that after a long interval the Rajasthan Financial Corporation gave statement of account to the petitioner on 21-9-1999 (Annexure-13) but the petitioner is deliberately and willfully avoiding the payment of term loan to the respondent-Corporation on non-existent ground.

11. Coming to the merits of the case, I am constrained to observe that the object of giving term loan to the petitioner was to ameliorate his financial condition he was to pay the term loan to the Corporation so that it may extend the financial assistance to ameliorate the financial condition of the other deserving persons, units or establishments. The Corporation is making repeated demand to recover the amount which is apparent from the perusal of documents on record but the petitioner is constantly hood-winking legitimate payment of term loan to the respondent which is not difficult to understand but it is difficult to approve it. The Corporation was advised to initiate proceedings under Section 31 of the Act of 1951 but on subsequent legal advice it is evident that it has withdrawn the proceedings under Section 31 of the Act of 1951. I have no hesitation to hold that once the proceedings under Section 31 of the Act of 1951 was withdrawn by the Corporation it is entitled to give impugned notice Annexure-19 to the petitioner under Section 30 of the said Act and is also entitled to recover the amount as envisaged under Section 29 of the aforesaid Act and an argument contrary to it is not acceptable.

12. In *Mahesh Chand v. Regional Manager, U.P. Financial Corporation*,<sup>7</sup> the Apex Court held that every endeavour should be made, to make the unit viable and be put on working condition. If it becomes unworkable only then the sale of unit should be ordered or coercive method should be allowed to be taken under Section 29 of the Act of 1951. Learned counsel for the respondent urged before me that the question to make the unit viable in the present case does not arise as repeatedly, the petitioner is committing the default in making the payment of term loan to the Corporation. I am not satisfied with the aforesaid argument raised by Mr. Rastogi in view of the ratio decidendi laid down by the Supreme Court in case of Mahesh Chand (supra).

Looking to the facts and circumstances of the present case in totality, I hereby direct the petitioner No.1 to deposit 50% of the amount sought to be recovered from it in pursuant to impugned notice Annexure-19 to the writ petition within a period of two months from today and remaining amount is made payable in two equal installments thereafter within a period of six months. After payment of 50% amount of term loan by petitioner on or before two months from today the respondent will furnish a statement of account to the petitioner indicating therein the balance amount recoverable from it within 15 days thereafter and the petitioner would pay 50% amount according to statement of account furnished to it by the respondent on or before expiry of five months from today and remaining entire amount is made payable

on or before expiry of eight months from today. It is made clear that if the petitioner fails to comply with any of the conditions enumerated hereinabove the respondent would be at liberty to recover the whole amount by invoking the provisions of Section 29 of the Act of 1951. With the aforesaid observation, the instant writ petition is finally disposed of at admission stage.

Petition dismissed.

Cases Referred.

1. AIR 1999 SC 2358
2. AIR 1999 Pun and Har 83
3. 1992 ISJ 288
4. (1994) 2 WLC (Raj) 78
5. AIR 1994 SC 2151
6. (1994) 2 WLC Raj 78
7. AIR 1993 SC 935